

REMARKS

Reconsideration and allowance of this application, as amended, is respectfully requested.

This Amendment is in response to the first Office Action dated July 1, 2004. By the present Amendment, claims 39-89 have been rewritten as new claims 90-139 to improve their form for reexamination. Claims 90-139 are of substantially the same scope as cancelled claims 39-89.

Claims 39-89 stand rejected under obviousness-type double patenting over claims 1-32 of U.S. Patent 6,335,044. This ground of rejection is traversed for the following reasons.

The present invention is an unobviousness improvement over the claims of U.S. Patent 6,335,044. Claims 90-139 define unobvious subject matter over claims 1-32 of U.S. Patent 6,335,044.

Independent claim 90 recites inter alia that "comminution of the seeds is carried out by a cooled flocculating roller..." and independent claim 126 inter alia recites the same subject matter although the Examiner correctly observes that claim 126 is not limited to lupine seeds.

The utilization of a cooled flocculating roller to perform comminution provides for a substantially enhanced product. The third paragraph under the heading "Summary of the Invention" teaches as follows:

"The flocculating roller is cooled so that the comminution process becomes more efficient and gentler for the seeds to be comminuted. Cooling is particularly intended to prevent the seeds from heating during comminution. The cooling effect can be ensured, for example, with common tap water that maintains the comminuted seeds in a temperature range still below the denaturation temperature

of the lupine proteins. Suitable temperatures are within the range between 8° C and 35° C."

Furthermore, the second paragraph under the heading "Description of the Embodiment of the Invention" teaches in part "[t]he flocculating roller used for the rolling operation is cooled, not least in an approach to enhance the efficiency of the comminuting operation". It is therefore seen that the Specification teaches a distinct benefit of cooling the flocculating roller which prevents the comminution operation from heating the proteins to a temperature at which they will be denatured as a result of the compression produced by comminution.

The Examiner has supplied no reasoning why it would be obvious to a person of ordinary skill in the art to modify the claims of U.S. Patent 6, 335,044 to include the carrying out of the comminution of seeds by a cooled flocculating roller. Accordingly, the rejection of claims 39-89 and their newly submitted counterpart claims 90-139 is erroneous and should be withdrawn.

In view of the foregoing amendments and remarks it is submitted that each of the claims in the application is in condition for allowance. Accordingly, early allowance thereof is respectfully requested.

If the Examiner believes that there are any other points which may be clarified or otherwise disposed of either by telephone discussion or by personal interview, the Examiner is invited to contact Applicants' undersigned attorney at the number indicated below.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to the Antonelli, Terry, Stout & Kraus,

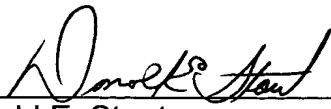
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LLP Deposit Account No. 01-2135 (Docket No. 785.40641X00), and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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